competing with it either individually or in partnership or as an officer in a rival company. The Petitioner then filed this petition for the winding-up of Petrotech. The resolution to amend the Memorandum and Articles of Association of Petrotech to enable a member's shares to be expropriated as aforesaid was carried at the Extraordinary General Meeting held on July 3, 1981.

On August 28, 1981, the winding-up petition came on for hearing before me. Counsel for Petrotech, Mr. Cheong Yuen Hee, argued that a shareholder petitioner must prove in his petition that the company had assets of such an amount that in the event of a winding-up he would have a tangible share of the surplus to receive. In this case Petrotech was insolvent and therefore the Petitioner had no *locus standi*. Mr. Cheong made no attempt to substantiate Gloor's allegations that the Petitioner wanted more information about Petrotech and the Hong Kong company in order to wreck Petrotech and to profit Rimaco. Mr. Cheong did not explain how the information the Petitioner wanted could have been of benefit to Rimaco. I found that there was no substance to such allegations and that the Petitioner's explanation of his reason for wanting more information was reasonable. Mr. Cheong also did not clarify in what way Petrotech would suffer if the Petitioner remained as a minority shareholder thereof.

In view of the facts and circumstances of the case set out above, to order the Petitioner to sell his shares to Petrotech would be tantamount to giving the court's backing to the high-handed action of Gloor and Cloward in trying to expropriate the Petitioner's shares in Petrotech by amending its Memorandum and Articles of Association. To restore the *status quo*, I ordered that the Petitioner be granted the option to purchase as many Petrotech shares as he wished at par provided he exercised such option by September 30, 1981.

Order accordingly.

Solicitors: *K. Y. Choy & Co.; Chan, Goh & Co.*

PUBLIC PROSECUTOR v. FRANCIS T. SEOW

[A.C.J. (Wee Chong Jin C.J.) May 26, 1982]
[Singapore – Magistrate's Appeal No. 169 or 1981]

Legal Profession – Practising Certificate – Solicitor "solemnly and sincerely" declared that he was not disqualified from applying – Solicitor actually disqualified as judgment debt exceeding $100,000 against him – Legal Profession Act (Cap. 217), s. 30 (1) (d), (e), & (f).

Legal Profession – Solicitor disqualified under section 30(1) (f) from applying practising certificate – Burden of proof on prosecution.

On March 29, 1980, respondent, a solicitor applied for a practising certificate for the year ending March 31, 1981 and he "solemnly and sincerely" declared that he was not disqualified by section 30(1) (f) from applying for the said practising certificate. In fact, he was disqualified as there was then outstanding against him a judgment debt exceeding $100,000. Pursuant to the above application the Assistant Registrar of the Supreme Court issued him a practising certificate.

On September 1, 1981, the respondent appeared before a District Court on a charge of giving false information and inducing the Assistant Registrar to do something which he ought not to have done if the true state of facts regarding such information were known to him. The trial judge acquitted the respondent because "there was a reasonable doubt in (his) mind as to whether or not (the respondent) was in fact aware of the amendments to the Legal Profession Act when he made the statutory declaration".

Held, allowing the appeal: (1) the trial judge applied the wrong test in the context of this case unless in using the expression "reasonable doubt in mind" the trial judge meant to say that after considering all the evidence he could not feel sure that the respondent knew of the disqualifying provisions of section 30(1)(f). The proper approach should have been "Do I accept the respondent's explanation and, if not, do I feel sure that he was aware of the statutory disqualifying provision?"

(2) having regard to all the facts and the surrounding circumstances, the respondent's explanations relating to a matter governing his continued right to practise his profession defies credulity and no reasonable tribunal could have any doubt that the respondent was aware of the statutory disqualifying provision when he made the statutory declaration. Accordingly, the order of acquittal must be set aside and a sentence of $1,000, the maximum fine would be imposed.

MAGISTRATE'S APPEAL.

Sowaran Singh (Deputy Public Prosecutor) for the appellant.

H.E. Cashin (*Choo Han Teck* with him) for the respondent.

Cur. Adv. Vult

Wee Chong Jin C.J.: On March 30, 1979 Parliament passed the Legal Profession (Amendment)

Act, 1979. It was assented to by the President on April 26, 1979 but did not come into operation until October 15, 1979. *Inter alia*, the amending Act amended section 30(1) of the Legal Profession Act by the addition of paragraphs (d), (e) and (f). These additions prohibited a solicitor from applying for a practising certificate:

"(d) if he is an undischarged bankrupt or a receiving order in bankruptcy is in force against him; or

(e) if he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors; or

(f) if he has one or more outstanding judgment against him amounting in the aggregate to one hundred thousand dollars or more which he has been unable to satisfy within six months from the date of the earliest judgment."

The amending Act also repealed section 52 and enacted a new section 52 which provided for compulsory voting in the election of the members of the Council of the Law Society.

After these amendments had come into effect the Registrar of the Supreme Court, before the close of the practice year ending 31.3.80, wrote to the President of the Law Society informing him that by virtue of Rule 8 of the Solicitors Practising Certificate Rules 1970 he required all applicants for a practising certificates to execute a statutory declaration in the form annexed to his letter. The form was as follows:—

"THE STATUTORY DECLARATION ACT
(CHAPTER 13)

STATUTORY DECLARATION

I
NRIC/Passport No. Occupation
Address
do solemnly and sincerely declare that:—

1. I am not disqualified by section 30(1) (d), (e) or (f) of the Legal Profession Act (Cap. 217) from applying for a practising certificate for the Year ending March 31, 19..; and

2 *(a) I voted at the last election of members to the Council of the Law Society of Singapore.

OR

*(b) I did not vote at the last election of members to the Council of the Law Society of Singapore.

(* Delete where appropriate)
and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act, 1835.

(Signature of Declarant)

Declared before me at Singapore
this day of 19..

Justice of the Peace,
Notary Public or other
officer empowered by
law to administer oaths,
affirmations, or
affidavits."

The Registrar required from every applicant for a practising certificate a statutory declaration because of the new provisions of section 30(1) (d), (e) and (f) and section 52 (2) of the Act.

Pursuant to the letter from the Registrar the Secretary of the Law Society sent a circular dated March 19, 1980 to all its members informing them of the Registrar's requirement and attached to the circular the form of the statutory declaration that the Registrar required.

On March 29, 1980, Mr. Francis T. Seow, the respondent in this appeal, an advocate and solicitor and a member of the Law Society of Singapore appeared before Mr. C.C. Tan, also an advocate and solicitor and who was also a Commissioner for Oaths, and made a statutory declaration in the form prescribed by the Registrar.

In his statutory declaration the respondent "solemnly and sincerely" declared that he was not disqualified by section 30(1)(f) from applying for a practising certificate for the year ending March 31, 1981. In fact, he was disqualified as there was then outstanding against him a judgment debt well in excess of $100,000/-.

Mr. Tan Seck Sam, the then Assistant Registrar of the Supreme Court, received the respondent's application for a practising certificate for the year ending March 31, 1981 including the statutory declaration sometime towards the end of March 1980 and issued a practising certificate to the respondent.

On 1st September 1981 the respondent appeared before a District Court and claimed trial to the following charge:—

"You, Francis T. Seow, m/52 yrs
I.C. 1112608-A
are charged that you, on or about the 31st day of March 1980 at the Registry, Supreme Court, Singapore, did give to a public servant, namely, one Tan Seck Sam, an Assistant Registrar of the Supreme Court, Singapore, information in writing contained in a Statutory Declaration declared before one C.C. Tan, a Commissioner for Oaths on March 29, 1980, to wit,

'I am not disqualified by section 30(1)(d), (e) or (f) of the Legal Profession Act (Chapter 217) from applying for a *practising* certificate for the Year ending 31st March 1981'

which you knew to be false knowing it to be likely that you would thereby cause the said public servant to issue you with a Practising Certificate for the Year ending March 31, 1981 which he would not have done if the true state of fact respecting which said information was given were known to him, and you have thereby committed an offence punishable under section 182 of the Penal Code (Chapter 103)."

During the trial it was not in dispute that the respondent had given information to the Assistant Registrar, Supreme Court; that the information was in fact false because at the time he gave the information he was in fact not qualified to apply for a practising certificate as at that time he had a judgment debt in excess of $100,000/- (in fact the amount including interest was $266,497.09); that it had induced the Assistant Registrar to do something which he ought not to have done if the true state of facts respecting such information in his statutory declaration that he was not disqualified by section 30(1) (f) from applying for a practising certificate for the year ending March 31, 1981 was false and it was conceded by the Prosecution that the burden of proof on this issue lay on the Prosecution.

The following undisputed facts were also adduced in evidence at the trial:–

1. A draft of the Legal Profession (Amendment) Bill was sent to all members of the Law Society on November 10, 1978.

2. The amendments to the Legal Profession Act proposed in the Bill were discussed at the Annual General Meeting of the Law Society on November 25, 1978.

3. The minutes of that Annual General Meeting were sent to all members of the Law Society.

4. The date of the coming into operation of the Legal Profession (Amendment) Act was notified to all members of the Law Society.

5. The Secretary of the Law Society notified all members of the Law Society on March 19, 1980 of the requirement by the Registrar of the Supreme Court of a statutory declaration "in the Form attached, in view of sections 30(1) (d), (e) and (f) and 52(2) of the Legal Profession Act", and advising all members "to comply with the Registrar's request when applying for their Practising Certificates".

6. The front page of *the Straits Times* of March 3, 1979 had an article captioned *"New Powers Sought* and Quicker Action on Crooked Lawyers" which contained the following paragraph:–

"The government is to seek new powers in Parliament on Monday to pave the way for quicker action or investigation against lawyers suspected of abusing their clients' trust by using money deposited with them, or other forms of misconduct.

The Legal Profession (Amendment) Bill, to be tabled by the Minister for Law, Science and Technology and Environment, Mr. E.W. Barker, will also have provisions to disqualify a lawyer from practising if he is financially embarrassed, and to make voting compulsory in elections to the council of the Law Society of Singapore."

7. Page 3 of the *New Nation* (the only English daily afternoon newspaper) of March 13, 1979 had a article captioned "Second Reading of Legal Bill" which contained the following paragraph:–

"(The Legal Profession [Amendment] Bill) is also aimed at disqualifying a solicitor who is financially embarrassed in certain circumstances from applying for a practising certificate."

8. Page 14 of the *Straits Times* (the only English daily newspaper) of March 31, 1979 had an article captioned "House Passes Bill to tighten control over lawyers" which contained the following paragraphs:–

"A clause has also been included as a preventive measure to safeguard the public from dealing with solicitors who are financially embarrassed.

A solicitor will be disqualified from applying for a practising certificate if he is an undischarged bankrupt, or has entered into a composition with his creditors, or has one or more outstanding judgments against him amounting to $100,000 or more which he is unable to satisfy within six months from the date of his judgment."

The respondent in his defence testified that "he was not *fully* aware of (the amendments to the Legal Profession Act by the Legal Profession [Amendment] Act) until it was brought home to (him) that there were such amendments and that they had come into effect on 15.10.79" until October 24, 1980. He said that when he swore the statutory declaration on March 29, 1980 before Mr. C.C. Tan his "attention was not particularly directed to section 30 (1) (d), (e) and (f)" and that he then believed the contents to be true. He said the forms accompanying his application to the Registrar for a practising certificate for the year

ended March 31, 1981 (which included the statutory declaration) were completed and typed, with deletions where appropriate, by his personal assistant, Miss Ruby Koh Bee Lian, and she had been doing so since he started private practice in 1971 after he had resigned from the Government Legal Service at the time when he was Solicitor-General.

In cross-examination the respondent asserted that from 1979 to October 1980 he had not *heard* about these amendments to the Legal Profession Act. His reason was that during half of that period he was away from Singapore and that when he returned he would only look through very quickly the newspapers when he had the time to do so.

In cross-examination he admitted that Law Society circulars are left in his room and that he read them in the sense of "merely glancing'. at them but, when asked whether he had read the circulars on the Legal Profession (Amendment) Act 1979, his answer was "I don't remember seeing them." He said he did not read the circular which had annexed to it the statutory declaration required by the Registrar.

When he was re-examined specifically on his statutory declaration his answers were evasive as appears from the following verbatim extract:—

"Q. Your Statutory Declaration in P21.
When it was sworn, did you read it at all?

A. I suppose I must have looked at it.
I thought it was just one of those routine things.

Q. Did you see or notice the reference to s.30(1) (d) (e) (f)?

A. If I did see it, it never registered
Court will note that in great part of it related to voting and that was the part that caught my eye. That was spelt out in detail."

I have set out the relevant evidence at some length. The respondent was the Solicitor-General when he resigned in 1971 and started his private practice. The relevant amendment disqualifying a solicitor from applying for a practising certificate if he has an undischarged judgment debt exceeding $100,000/- from the date of the judgment had been brought to the attention of all practising members by circulars of the Law Society and by prominent publicity in the press prior to and after Parliament had passed the necessary legislation. Immediately prior to the respondent's statutory declaration the Law Society had circularised all practising members advising them to comply with the Registrar's requirements of a statutory declaration in the form prescribed by the Registrar. Every circular of the Law Society had been left in the respondent's room in his office and he admitted "glancing" at them. He had made a solemn declaration for the purpose of obtaining a practising certificate for the year ending March 31, 1981 knowing that the Registrar would accept and act on it.

From the undisputed facts the inference was irresistible that the respondent knew of the existence and contents of section 30(1)(f) of the Legal Profession Act when he made the statutory declaration.

The respondent's explanations for being unaware of the existence and contents of section 30(1)(f) were that in 1979 to October 1980 he was frequently away from Singapore; that he was so busy that he seldom read the newspapers and whenever he did he looked through them "very quickly"; that he merely glanced at all Law Society circulars; that he affirmed the statutory declaration thinking it was "just one of those routine things" and that "if he saw the reference to section 30(1) (d), (e) and (f) it never registered. Unless his explanations were accepted by the trial judge or unless the trial judge could not feel sure that he was aware of the disqualifying provisions of section 30(1)(f), the prosecution had proved his guilt.

The trial judge acquitted the respondent. In the Grounds of Decision the trial judge did not say that he accepted the respondent's explanations. The trial judge acquitted the respondent because "there was a reasonable doubt in (his) mind as to whether or not (the respondent) was in fact aware of the amendments to the Legal Profession Act when he made the statutory declaration."

In my opinion the trial judge applied the wrong test in the context of this case unless in using the expression "reasonable doubt in my mind" the trial judge meant to say that after considering all the evidence he could not feel sure that the respondent knew of the disqualifying provisions of section 30(1) (f). The proper approach should have been "Do I accept the respondent's explanations and, if not, do I feel sure that he was aware of that statutory disqualifying provision?"

In my judgment, having regard to all the facts and the surrounding circumstances, the respondent's explanations relating to a matter governing his continued right to practise his profession defies credulity and no reasonable tribunal could have any doubt that the respondent was aware of the

statutory disqualifying provision when he made the statutory declaration. Accordingly, the appeal must be allowed, the order of acquittal set aside and a verdict of guilty substituted. The sentence will be the maximum fine of $1,000/-.

Appeal Allowed

Solicitors: *Murphy & Dunbar.*

G. BALAN NAIR v. SINGAPURA DEVELOPMENTS PTE. LTD.

[O.C.J. (Rajah J.) August 25, 1982]
[Singapore – Originating Motion No. 8 of 1978]

Tenants' Compensation – Appeal against Board's decision disallowing tenant compensation – Controlled Premises (Special Provisions) Act (Cap. 267), s. 9A.

Landlord & Tenant – Controlled premises – Compensation claim – Tenant in physical occupation of premises – Scope of S. 9A, Controlled Premises (Special Provisions) Act (Cap. 267), s. 9A.

The applicant applied by way of Motion as the party aggrieved by a decision of the Tenants' Compensation Board disallowing him compensation on the ground that such decision was wrong in law. The Board dismissed his application for compensation on the ground that he was "not entitled to compensation as the provisions of section 9(1)(a) of the Act would apply in his case as he was unable to establish with reasonable uncertainty that he was in occupation of the controlled premises in question prior to January 1, 1968".

Held, allowing the application: (1) on the evidence before the Board, the landlords were aware that the applicant was in physical occupation of the premises in question and had even accepted payment for water consumption for the months of October and November 1967. Had this aspect of the case been canvassed before the Board, the result would have been different.

(2) the matter should therefore be remitted to the Board for assessment of compensation to the applicant.

ORIGINATING MOTION.

V. Ramakrishnan for the applicant.
Goh Joon Seng for the respondent.

Rajah J.: This is an application by way of Motion brought to the High Court by Govindan Balan Nair (the Applicant), being the party aggrieved by a decision of the Tenants' Compensation Board* disallowing him compensation on the ground that such decision is wrong in law.

The Board dismissed the application by the Applicant for compensation on the ground that he was "not entitled to compensation as the provisions of section 9(1)(a) of the Act would apply in his case as he is unable to establish with reasonable certainty that he was in occupation of the controlled premises in question prior to January 1, 1968." (Page 70 of Record of Appeal).

It is common ground that the Applicant was not only in occupation of No. 36, The Arcade, Raffles Place (the premises) but also its tenant as from January 1, 1968. However, the Applicant contended that he was not only tenant of the premises as from January 1, 1968 but that he had been tenant thereof prior to January 1, 1968 whereas the Landlords maintained that the tenancy, in so far as they and the Applicant were concerned, commenced on January 1, 1968 and not before, and that, if the Applicant were in occupation of the premises as claimed by him, such occupation was in breach of Clause 2(b) of the Tenancy Agreement, which prohibits subletting and parting with possession of the premises, dated the 6th day of November 1967 made between the Landlords (British and Malayan Trustees Ltd.) and Mr. Alwee Alkaff (Page 91 of the Record) which states that the said Mr. Alkaff had become tenant of the premises from October 1, 1967. The Applicant, as previously stated, became the tenant of the premises as from the 1st day of January 1968 under an Agreement dated February 15, 1968 made between the Landlords and the Applicant. His counsel's contention before me was that if the Applicant was not tenant of the premises from January 1, 1968 then he was in occupation thereof within the meaning of section 9A of the Controlled Premises (Special Provisions) Act (Cap. 267) (the Act) prior to that date. It is clear from the evidence, the letter dated December 12, 1967 from the K.K. Police Station and that from the insurance company dated December 6, 1967, that the Applicant was in physical occupation of the premises before the January 1, 1968. Under section 9A of the Act the Board may, in its discretion, award compensation to a person who is neither a tenant nor a sub-tenant:

"9A – (1) Notwithstanding anything contained in this Act or any written law or rule of law, but subject to this section and section 9 of this Act, the Board may in its discretion award compensation to a person who is neither a tenant nor a sub-tenant if that person (hereinafter in this Act referred to as "the occupier") –

(a) has been continuously using or occupying any part of the controlled premises prior to the 1st day of January, 1968;

*The decision of the Board is reproduced as Appendix to this case.